

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5250 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

2. To be referred to the Reporter or not? yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? no

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? no

5. Whether it is to be circulated to the Civil Judge?
no

BAXUKHAN ABDULKHAN PATHAN

Versus

SAMARATBHAI RASULABHAI

Appearance:

MR KR DESAI for Petitioner

MR HN BRAHMBHATT for Respondent No. 1

MR.D.C.DAVE,ADDL.PUBLIC PROSECUTOR for Respondent No. 5

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/12/96

ORAL JUDGEMENT

This is the application under section 439(2) of

the Code of Criminal Procedure for cancellation of the bail granted by this Court (Coram: S.D.Dave,J.) in Criminal Misc.Application No.4360/96 on 25.9.1996.

The petitioner is the original complainant who has lodged the complaint against the respondents No.1 to 4 herein, among others, for the offences punishable under sections 143,147,337,324 and 114 of the Indian Penal Code and under section 135 of the Bombay Police Act, as per the C.R.No.141/96 of Sanand Police Station. The respondents No.1 to 4 and others were arrested for the aforesaid offences and were produced before the Court of the learned Judicial Magistrate, First Class at Sanand. The learned Judicial Magistrate First Class, Sanand released the accused persons on bail.

It appears that the petitioner herein had filed Criminal Misc.Application No.48/96 for cancellation of the bail in the Court of the learned Joint District & Sessions Judge, Mirzapur at Ahmedabad, under section 439(2) of the Code of Criminal Procedure. The learned Additional Sessions Judge, Ahmedabad (Rural), by his judgment and order dated March 14,1996, granted the said application and cancelled the bail which was granted in favour of respondents No.1 to 4 and others.

The respondents Nos.1 to 4, being aggrieved by the said order of cancellation of bail, preferred Criminal Revision Application No.216/96 in this Court for quashing the said order. This Court (Coram: S.M.Soni,J.) by its C.A.V. Judgment, rejected the said Criminal Revision Application No.216/96, observing, inter alia, that the facts of the case manifest the abuse of the liberty to the petitioners (respondents No.1 to 4 herein). This Court, inter alia, observed as under:

"Coming to the merits of the case, it is clear that when a complaint was filed by respondent No.1 about the liberty being abused by the applicant and others, court imposed a condition on the applicants and others and restrained them from entering the village Andej. It can be presumed that when the court imposed such a condition on the applicant and others, the court had found substance in the allegations made by respondent No.1. Even thereafter it appears that the applicants and others did not improve

and have entered that village in breach of the condition. Offence is registered for the breach of the condition and the same is pending trial. For that offence of breach of the condition of bail, applicants and others were arrested and are released on bail and, therefore, respondent No.1 moved an application for cancellation of bail. Bail came to be cancelled and the applicants were taken in custody. Thereafter, the applicants gave an application and they were released on bail by the learned Sessions Judge. Even thereafter the applicants have taken law in their hands and assaulted respondent No.1 and his sons and other members, when they were returning from a marriage party. Here, so far as this last incident is concerned, it not only suggests that applicants and others are strong-headed persons, but they have no regard for the court's orders. When the court has granted them bail on condition not to enter village Andej, they had entered village Andej. This is how they have committed breach of the condition of bail and secondly they have assaulted respondent No.1, his sons and other members. This suggests that they have again taken law in their hands, instead of taking recourse under law. If this is the state of affair so far as facts of the case are concerned, I am of the opinion that this court should not interfere with the order passed by the learned Addl. Sessions Judge.

However, it is made clear that in case the applicants and others are acquitted honourably in the complaint for the breach of the condition of bail and/or are acquitted honourably in the assault on the respondent no.1 and his sons for which the bail came to be cancelled, they will be at liberty to move the court for fresh bail and the learned Sessions Judge, who hears the application may consider the fresh application in the light of the orders of acquittal. This, in my opinion, is one of the grounds to show that the applicants have right to make a fresh application for bail, suggesting that the order of cancellation of bail is an interlocutory one.

In the facts and circumstances of this case, principles laid down in Bhagirathsing's case (supra) on the contrary goes against the petitioners. The facts of this case shows abuse of liberty granted to petitioners."

Despite the aforesaid position, the respondents No.1 to 4 preferred Criminal Misc. Application No.4360

of 1996 for releasing them on bail. In para 6 of the said Criminal Misc.Application, respondents No.1 to 4 stated that on cancellation of the bail granted in their favour, they had filed Criminal Revision Application No.216/96 before the High Court which was rejected. It is, therefore, clear that the respondents No.1 to 4 are clearly guilty of suppressing the material facts in regard to the offences registered for the breach of the conditions and the same being pending for trial. The respondents Nos.1 to 4 also did not mention anything about the observation made by this Court while rejecting the Criminal Revision Application No.216/96 that the respondents No.1 to 4 could only be at liberty to move the Court for fresh bail and the learned Judge who hears the application may consider the fresh application in the light of the orders of acquittal, if any, in the criminal complaint for breach of the conditions of bail. The said complaint was pending when the bail application, being Criminal Misc.Application No.4360/96 was preferred. It is still pending today. Therefore, by virtue of the observations made in the judgment rendered in Criminal Revision Application No.216/96, the respondents No.1 to 4 were not entitled to prefer any application for bail till they were acquitted honourably in the complaint for the breach of the conditions of bail and/or are acquitted in the case of assault on the petitioner herein and his sons for which the bail was cancelled. The respondents No.1 to 4, however, suppressed this material fact. They also did not annex the copy of the judgment of the aforesaid Criminal Application No.216/96 while preferring fresh bail application. In this view of the matter, the bail granted to each of the respondents No.1 to 4 is liable to be cancelled.

Mr.H.N. Brahmhatt, learned Advocate for the respondents No.1 to 4, placed reliance on the case of DOLATRAM AND OTHERS v. STATE OF HARYANA, reported in 1995 Supreme Court Cases (Cri) 237 wherein the factors which could be taken into consideration for rejection of bail are enumerated. I have perused the said authority minutely. It is true that the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. It is observed by the Supreme Court therein that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly are: interference or attempt to interfere with the due course of administration of justice or evasion or

attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. These are illustrative grounds and they are not exhaustive. It is further observed by the Supreme Court that the bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the condition of bail during the trial.

The grounds for cancellation of bail under Sections 437(5) and 439(2) of the Code of Criminal Procedure are identical, namely, bail granted under Section 437(1) or (2) or 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence of witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds could be illustrative and not exhaustive. It is true that rejection of bail would stand on one footing, but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

Considering the aforesaid settled legal position regarding cancellation of the bail, I am of the view that by virtue of the judgment and order rendered in Criminal Revision Application No.216/96, the respondents No.1 to 4 were not entitled to prefer any bail application till their acquittal by the concerned criminal court in the case against them for breach of the conditions of the bail and in the case for assault.

The respondents No.1 to 4 did not mention anything about the aforesaid observation made in the judgment in Criminal Revision Application No.216/96 nor annexed a copy of the said judgment along with their fresh bail application. Thus, this Court was clearly misled in granting the bail as the observations made in the said judgment were not brought to the notice of the

Court while dealing with the fresh bail application of respondents No.1 to 4. To my mind, if this Court knew of the earlier order about the eligibility of the respondents No.1 to 4 to file a fresh bail application, in all probabilities, the bail would not have been granted to them. This would amount to a fraud with the Court by deliberately suppressing the material facts.

It transpires from the record that the respondents No.1 to 4 have committed the breach of the conditions twice. The respondents-accused also assaulted the petitioner-complainant twice and two cases in respect thereof have been filed against them. Both the said cases are pending. This Court, while delivering judgments in Criminal Revision Application No.216/96, made observation in this behalf. All these material observations were withheld by the respondents Nos.1 to 4 deliberately and wrongly obtained the bail from this Court by misrepresentation. Under the circumstances, the bails granted to the respondents No.1 to 4 are liable to be cancelled.

In the result, the Misc.Criminal Application is allowed. The bails granted to respondents No.1 to 4 as per order dated 25.9.1996 in Criminal Misc.Application No.4360/96 are hereby cancelled. Rule is accordingly made absolute.

At this stage, Mr.Brahmbhatt prays for time for the respondents No.1 to 4 to surrender. He requests for four weeks' time in order to enable the respondents No.1 to 4 to approach the Supreme Court. Request granted. The respondents No.1 to 4 are granted time of four weeks to surrender.
